

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH EARL GAY, ) No. C 12-04280 EJD (PR)  
Plaintiff, ) ORDER OF DISMISSAL  
vs. )  
EDMUND BROWN, et al., )  
Defendants. )

Plaintiff, a state prisoner at San Quentin State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff's original complaint was dismissed with leave to amend and Plaintiff has filed an amended complaint.

## DISCUSSION

## **A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
 2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
 3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
 5 elements: (1) that a right secured by the Constitution or laws of the United States was  
 6 violated, and (2) that the alleged violation was committed by a person acting under the  
 7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8

9 **B. Plaintiff's Claims**

10 Plaintiff's original complaint named as Defendants all justices on the California  
 11 Supreme Court, several former governors and various legal associations. Plaintiff, who  
 12 was sentenced to death, stated that the appellate process for death penalty cases in  
 13 California is broken as it takes far too long to appoint counsel, for a legal decision, the  
 14 decisions are political and former Chief Justice Rose Bird was removed for political  
 15 reasons because she opposed the death penalty. Plaintiff also discussed his displeasure in  
 16 the manner federal courts process habeas cases. These allegations failed to set forth a  
 17 cognizable claim and Plaintiff was provided an opportunity to amend.<sup>1</sup>

18 The amended complaint repeats the same allegations of the original complaint and  
 19 also challenges Plaintiff's underlying conviction. Plaintiff's general and wide ranging  
 20 claim that the California justice system is broken is far too vague and fails to state a claim  
 21 for relief. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v.  
 22 Twombly, 550 U.S. 544, 570 (2007). ) ("[A] complaint must contain sufficient factual  
 23 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"). To the  
 24 extent Plaintiff wishes to challenge the evidence of his conviction he must do so in a

25

---

26       <sup>1</sup> However, the appeals process has benefitted Plaintiff in that several of his robbery related  
 27 counts were overturned on appeal and a retrial on the penalty phase was ordered. Later the  
 28 retrial of the penalty phase was reversed and remanded for a second retrial. People v. Gay, 42  
 Cal. 4th 1196 (2008)

1 habeas petition. The complaint will be dismissed and as Plaintiff has already been  
2 provided an opportunity to amend, and as it is clear that further amendment would be  
3 futile, this case is dismissed without leave to amend. See Lopez v. Smith, 203 F.3d 1122,  
4 1129 (9th Cir. 2000).

5  
6 **CONCLUSION**

7 For the foregoing reasons, the complaint is DISMISSED without leave to amend  
8 for failure to state a claim.

9 DATED: 2/20/2013

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

KENNETH EARL GAY,

Case Number CV 12-04280 EJD (PR)

Plaintiff,

**CERTIFICATE OF SERVICE**

vs.

EDMUND BROWN, et al.,

Defendants.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 2/21/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s)hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

**Kenneth Earl Gay**  
D-15601  
San Quentin State Prison  
San Quentin, CA 94974

DATED: 2/21/2013

Richard W. Wiking, Clerk  
/s/By: Elizabeth Garcia, Deputy Clerk